

AMENDED FINAL STATEMENT OF REASONS
Subject Matter of Proposed Amendments to Regulations:
Workers' Compensation – Audit Regulations

disability, permanent disability, death benefits and VRMA and late paid self-imposed increases required by the Labor Code and case law.

Necessity:

Section 10111.2 sets forth the audit penalty schedules in compliance with Labor Code section 129.5. Section 10111.2 became effective on January 1, 2003. The changes made to Section 10111.2 since the original notice are to subdivisions (a)(1) and (a)(8). Former Section 10111.2 set forth the same penalty amounts for *late paid* self-imposed increases as for an underpayment of indemnity. The penalty for *failure* to pay self-imposed increase is set forth in subdivision (a)(1). Because the penalties for *late paid* self-imposed increases were higher than the *failure* to pay self-imposed increases, it was determined that the penalty amount for *late paid* self-imposed increases should be reduced. The incremental penalties for *late paid* self-imposed penalty are now less than the incremental penalties for *failure* to pay self-imposed penalties. The first version of proposed Section 10111.2 included a flat \$50 penalty for late paid self-imposed increased (which was due on the same date as the late paid indemnity payment). This proposal was changed as the flat rate penalty did not relate to the amount of underpayment of indemnity. The penalties are necessary to ensure that claims administrators comply with the Labor Code and regulations so that injured workers' receive the benefits due to them.

Technical, Theoretical, and/or Empirical Study, Reports or Documents:

The division also relied upon the CHSWC report on the DWC Audit Function, and input from the auditors who audit the claims administrators.

B.

Following the 15-day comment period, no additional changes were made to the regulations.

LOCAL MANDATES DETERMINATION

- Local Mandate: None. The regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The amendments do not apply to any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: The regulations may impose discretionary costs on local agencies and school districts. Any such costs, however, will be non-discretionary because the requirement that every employer comply with the requirements of California's workers' compensation laws is a statutory obligation. Furthermore, any such costs are non-reimbursable because the requirement for employers to comply with California's workers' compensation laws is not unique to local agencies or school districts and applies to all employers alike, public and private, including the State of California.

- The proposed regulations may impose costs on State agencies. (State government accounts for about 3% of the occupational injuries and illnesses.) Any such costs are, however, are non-reimbursable since the requirement on an employer to comply with California's workers' compensation laws is not unique to State agencies and applies to all employers alike, public and private. Because the proposed regulations implement the amended Labor Code sections 129 and 129.5 which (1) eliminate penalties for audit subjects that meet or exceed the profile audit review performance standards, and (2) provide for penalties to be assessed only for violations involving late-paid and unpaid compensation against those audit subjects that meet or exceed the full compliance audit performance standards, the regulations may result in possible cost savings.

CONSIDERATION OF ALTERNATIVES

The Division considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective and less burdensome to affected private persons and businesses than the regulations that were adopted.

SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED

The comments of each organization or individual are addressed in the following 45 Day Comment Period Chart and 15 Day Comment Period Chart.

The public comment periods were as follows:

Initial 45-day comment period on proposed regulations:

May 29, 2003 through July 15, 2003.

15-day comment period:

August 1, 2003 through August 20, 2003.